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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,923	02/11/2004	Michael J. Campbell	Trocar-3	2359

7590 06/09/2006  
Donald N. Halgren  
35 Central Street  
Manchester, MA 01944

EXAMINER
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SCHELL, LAURA C

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/776,923

Applicant(s)

CAMPBELL ET AL.

Examiner

Laura C. Schell

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to a cannula assembly, classified in class 604, subclass 264.
- II. Claims 9-19, drawn to a method of maintaining an operative pneumoperitoneum, classified in class 604, subclass 506.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the cannula assembly can be used for a different process, such as inflating something other than the pneumoperitoneum, such as a lung.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Donald Halgren on 6/2/06 a provisional election was made without traverse to prosecute the invention of Group II, claims 9-19.

Art Unit: 3767

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 1-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 9-12, 15, 17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Trudel et al. (US Patent no. 6,544,210). Trudel discloses a method of maintaining an operative pneumoperitoneum in a patient undergoing a surgical procedure (col. 3, line 61 through col. 4, line 9) comprising: introducing a trocar through a portion of an abdominal wall of said patient (col. 1, lines 49-57; see also col. 3, lines 61-67); introducing an operative surgical instrument through a lumen in said trocar (col. 1, lines 60-63; see also col. 3, lines 65-67); introducing a pressurized gas from a controlled pressure source (Fig. 1, 40) into said patient (24) through a passageway (49) between said surgical instrument (38) and a wall of said lumen in said trocar (col. 4,

lines 17-22). Trudel further discloses that the method included introducing the pressurized gas into said passageway between said surgical instrument and a wall of said lumen in said trocar via at least one port (Fig. 1, element 46 in trocar 30) in said trocar. Trudel further discloses that the method includes introducing at least one cannula into an abdominal wall portion of said patient (col. 3, line 61 through col. 4, line 27); introducing at least one operative surgical instrument through said at least one cannula to permit simultaneous operative function with said trocar as said trocar is caused to introduce distension gas into said patient (see Fig. 1, wherein the cannula is element 32, the instrument is 44 and the trocar used for insufflation is 30, also wherein the definition of "cannula" according to the Merriam-Webster's Online Dictionary is "a small tube for insertion into a body cavity or into a duct or vessel" (<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=cannula>) see also col. 4, lines 1-6; col. 4, lines 17-22; col. 4, lines 22-27).

Trudel further discloses a method of maintaining an operative pneumoperitoneum in a patient undergoing a surgical procedure comprising: introducing a trocar (Fig. 1, 32) through a portion of an abdominal wall of said patient (col. 1, lines 49-57; see also col. 3, lines 61-67); introducing an operative surgical instrument (44) through a lumen in said trocar (col. 1, lines 60-63; see also col. 3, lines 65-67); introducing a pressurized gas (Fig. 1, gas introduced through trocar 32) from a controlled pressure source (10) into said patient (24) through a gas passageway (42) between said surgical instrument (44) and a wall of said lumen in said trocar (Fig. 1, element 32; col. 4, lines 17-22); introducing a cannula (28) through said abdominal wall

of said patient (col. 3, line 61 through col. 4, line 27); and connecting said trocar (32) and said cannula (28) in fluid communication with one another through a conduit (conduit 18 connects to conduit 20 through device 10) arranged there between to provide controlled pressure within the abdomen of said patient. The port valve (46) allows for control of suction pressure through cannula 28 and hence also controls the pressure at which the air will be returned to the patient's abdomen (col. 4, lines 58-66). Trudel further discloses that the trocar which introduces gas into said patient and said cannula are arranged in communication with one another (through connection tubes 18, 20 and device 10) to controllably balance said pressurized gas introduced into said patient. Trudel further discloses that the cannula (28) has an open bore extending there through to permit operative instruments (34) there through without a mechanical seal (Fig. 1 discloses no seal used to seal the instrument within the cannula).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trudel et al. (US Patent No. 6544210) in view of Goodson et al. (US Patent No. 4735603). Trudel discloses the device substantially as claimed except for using a third cannula to monitor the pneumoperitoneum. Goodson, however, discloses using a third cannula (col. 3, lines 46-55) wherein the third cannula comprises a pressure sensor in order to sense

the pressure in the pneumoperitoneum and helps maintain a proper pressure (see abstract and col. 2, lines 16-28). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Trudel by using one of the cannulas as a means to monitor the pneumoperitoneum in order to maintain the needed pressure within the abdomen for a successful surgery (col. 2, lines 29-46).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trudel et al. (US Patent No. 6544210) in view of Smith (US Patent No. 6942671). Trudel discloses the device substantially as claimed except for a removable valve being arranged on the end of the trocar. Smith, however, discloses a removable valve that can be placed on the end of a trocar or cannula (col. 3, lines 13-25; also see col. 2, lines 39-43 which discloses that it can be used on a trocar). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the trocar of Trudel with a removable valve as taught by Smith in order to provide valve-less trocars and cannulas with an option of selective attachment to a valve (col. 3, lines 13-25).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trudel et al. (US Patent No. 6,544,210) in view of Cloyd (US Patent No. 5,203,767). Trudel discloses the device substantially as claimed except for an air seal. Cloyd, however, discloses that an "air seal" (col. 1, line 24) maintained in the trocar by a valve. Therefore it would have been obvious to one of ordinary skill in the art to have modified Trudel with the air seal as taught by Cloyd, in order to provide a seal of air to prevent air from escaping the trocar.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trudel (US Patent No. 6,544,210) in view of Hart et al. (US Patent No. 6,217,555). Trudel discloses the device substantially as claimed except for the trocar having a plurality of instruments extending therethrough simultaneously. Hart, however, discloses a trocar (Fig. 6, 25) with several instruments (67 and 48) extending there through simultaneously. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Trudel with the ability to use several instruments at once while extending through the trocar, as taught by Hart, in order to provide a trocar with the ability to have several instruments used at once to provide access to multiple instruments as needed by the surgical procedure.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Schell whose telephone number is (571) 272-7881. The examiner can normally be reached on Monday-Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LCS

*LCS*

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Sirmons*